

## RULEMAKING NOTICE

Notice Number _____	Rule Number _____	Env-Wq 500
<b>1. Agency Name &amp; Address:</b>  NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	<b>2. RSA Authority:</b> <b>3. Federal Authority:</b> <b>4. Type of Action:</b>	RSA 486:14, I (a) & (c) 40 CFR Part 35, Subparts I and K  <div style="display: flex; justify-content: space-between;"> <span>Adoption</span> <span><u>  X  </u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Amendment</span> <span><u>          </u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Repeal</span> <span><u>          </u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Readoption</span> <span><u>          </u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Readoption w/amendment</span> <span><u>  X  </u></span> </div>

**5. Short Title:** State Water Pollution Control Revolving Loan Fund

**6. (a) Summary of what the rule says and of any proposed amendments:**

The existing rules in Env-Wq 500 implement RSA 485:14, I, by establishing (a) the procedures and criteria applicable to eligible entities that apply for financial assistance from the state water pollution control revolving fund (clean water state revolving fund, or CWSRF), (b) the requirements for completing projects for which financial assistance from the CWSRF is received, and (c) the process for establishing repayment requirements for the financial assistance received. The rules were amended extensively in 2009 to accommodate receipt and disbursement of federal stimulus funds, but the rules that were not part of that proceeding are scheduled to expire on May 8, 2015. The Department thus is proposing to readopt the entire chapter. **The rules that would otherwise expire on May 8, 2015 will continue in effect pursuant to RSA 541-A:14-a, I, subject to the conditions established therein.**

As part of the readoption, revisions are proposed to (1) add definitions for terms that are used in the rules and delete definitions of terms that are no longer used in the rules; (2) move statutory definitions to an appendix so rulemaking will not be required if the definitions change; (3) clarify the rules in based on comments received from stakeholders and the Office of Legislative Services, Administrative Rules office on the recently-readopted Drinking Water SRF rules; (4) revise the rules as needed to reflect advances in technology and changes to federal law (including allowing certain non-governmental organizations and additional non-point source (NPS) pollution abatement projects, including BMPs, to be eligible); and (5) incorporate the requirements for procuring consulting engineering services and for contracting for construction that previously were in Env-Wq 600.

**6. (b) Brief description of the groups affected:**

The rules affect entities that are eligible to obtain funds from the CWSRF and choose to apply for such funds.

**6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:**

Rule	State Statute(s) Implemented	Federal Statute(s)/Regulations Implemented
Env-Wq 501	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 502	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 503	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3110
Env-Wq 504	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3150
Env-Wq 505	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3115
Env-Wq 506	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 507	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3120
Env-Wq 508	RSA 486:14	33 U.S.C. §§1251-1387
Env-Wq 509	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3140
Env-Wq 510	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3140
Env-Wq 511	RSA 541-A:22, IV	

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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Beth Malcolm	Title:	Environmentalist IV
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-2978
		Fax#:	(603) 271-4128
		E-mail:	<a href="mailto:Beth.Malcolm@des.nh.gov">Beth.Malcolm@des.nh.gov</a>

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, June 12, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, June 4, 2015 at 9:00 AM**

Place: **Auditorium, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 15:076 , dated 04/24/15:

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules may decrease costs to political subdivisions by an indeterminable amount and may decrease clean water state revolving fund expenses by an indeterminable but de minimus amount.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate. Title VI of the federal Clean Water Act, 33 U.S.C. §§1381-1387, authorizes the award of revolving loan fund capitalization grants to states, which in turn are authorized to provide low-cost loans and other types of assistance to eligible entities to finance the costs of water pollution abatement projects. Failure to readopt rules could result in the inability of the State to qualify to receive federal capitalization grants from the U.S. Environmental Protection Agency to fund the program. The grants have totaled approximately \$14 million each year.

**3. Cost and benefits of the proposed rule(s):**

The proposed rules may result in a de minimus decrease in expenses from the clean water state revolving fund by not having to send all annual hearing notices by first class mail. The Department is not able to determine a specific amount that expenses might be decreased related to this change. Only political subdivisions and nonprofit organizations are eligible to apply for funding from the clean water state revolving fund. To the extent political subdivisions and nonprofits (if viewed as independently owned business, otherwise no impact on independently owned businesses) apply for clean water state revolving funds, they may have a decrease in costs associated with the elimination of the requirement to submit a final application, loan agreement and supplemental agreement on Department of Environmental Services forms; requiring only the original disbursement request with no additional copies to be submitted to the Department; requiring an audit if \$750,000, not \$5000,000, in federal funds is expended; and, increasing the threshold for a value engineering study from \$10 million to \$20 million.

**A. To State general or State special funds:**

See 3 above.

**B. To State citizens and political subdivisions:**

See 3 above. No impact on State citizens.

**C. To independently owned businesses:**

See 3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

Political subdivisions are eligible to apply for funds from the CWSRF but are not required to do so. A decision to apply for funds would most likely be based on a determination that borrowing from the CWSRF is necessary to facilitate completion of eligible projects determined by the applicant to be beneficial. The rules do not create, modify, or expand any program in such a way as to require action by political subdivisions and so do not require political subdivisions to make any expenditures. The rules thus do not violate Part I, Article 28-a of the N.H. Constitution.